

**LICENSING AND REGULATION OF BEHAVIOR ANALYSTS
AND ASSISTANT BEHAVIOR ANALYSTS; REQUIRING AN
OCCUPATIONAL LICENSE; IMPOSING FEES**

CHAPTER 1156

S.B. No. 589

AN ACT

relating to the licensing and regulation of behavior analysts and assistant behavior analysts; requiring an occupational license; imposing fees.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 51.2031(a), Occupations Code, is amended to read as follows:

(a) This section applies only to the regulation of the following professions by the department:

- (1) athletic trainers;
- (2) *behavior analysts*;
- (3) dietitians;
- (4) [(3)] hearing instrument fitters and dispensers;
- (5) [(4)] midwives;
- (6) [(6)] orthotists and prosthetists; and
- (7) [(6)] speech-language pathologists and audiologists.

SECTION 2. Subtitle I, Title 3, Occupations Code, is amended by adding Chapter 506 to read as follows:

CHAPTER 506. BEHAVIOR ANALYSTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. **SHORT TITLE.** *This chapter may be cited as the Behavior Analyst Licensing Act.*

Sec. 506.002. **DEFINITIONS.** *In this chapter:*

- (1) "Advisory board" means the Behavior Analyst Advisory Board.
- (2) "Certifying entity" means the nationally accredited Behavior Analyst Certification Board or another entity that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to issue credentials in the professional practice of applied behavior analysis and approved by the department.
- (3) "Commission" means the Texas Commission of Licensing and Regulation.
- (4) "Department" means the Texas Department of Licensing and Regulation.
- (5) "Executive director" means the executive director of the department.
- (6) "License holder" means a person licensed under this chapter.
- (7) "Licensed assistant behavior analyst" means a person who is certified by the certifying entity as a Board Certified Assistant Behavior Analyst or who has an equivalent certification issued by the certifying entity and who meets the requirements specified by Sections 506.252 and 506.254.
- (8) "Licensed behavior analyst" means a person who is certified by the certifying entity as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst—Doctoral or who has an equivalent certification issued by the certifying entity and who meets the requirements specified by Sections 506.252 and 506.253.
- (9) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

Sec. 506.003. **PRACTICE OF APPLIED BEHAVIOR ANALYSIS.** (a) *The practice of applied behavior analysis is the design, implementation, and evaluation of instructional*

and environmental modifications to produce socially significant improvements in human behavior.

(b) *The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment or functional analysis.*

(c) *Applied behavior analysis interventions:*

(1) *are based on scientific research and the direct observation and measurement of behavior and environment; and*

(2) *use contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and elicit or evoke behaviors under specific environmental conditions.*

(d) *The practice of applied behavior analysis does not include:*

(1) *psychological testing, psychotherapy, cognitive therapy, psychoanalysis, hypnotherapy, or counseling as treatment modalities; or*

(2) *the diagnosis of disorders.*

SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

Sec. 506.051. LICENSED PSYCHOLOGISTS. *This chapter does not apply to a person licensed to practice psychology in this state if the applied behavior analysis services provided are within the scope of the licensed psychologist's education, training, and competence.*

Sec. 506.052. OTHER LICENSED PROFESSIONALS. *This chapter does not apply to a person licensed to practice another profession in this state if the applied behavior analysis services provided are within:*

(1) *the scope of practice of the person's license under state law; and*

(2) *the scope of the person's education, training, and competence.*

Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. *This chapter does not apply to a family member or guardian of a recipient of applied behavior analysis services who is implementing a behavior analysis treatment plan for the recipient under the extended authority and direction of a licensed behavior analyst or licensed assistant behavior analyst.*

Sec. 506.054. PARAPROFESSIONALS. *This chapter does not apply to a paraprofessional technician who delivers applied behavior analysis services if:*

(1) *the applied behavior analysis services are provided under the extended authority and direction of a licensed behavior analyst or licensed assistant behavior analyst; and*

(2) *the person is designated as an "applied behavior analysis technician," "behavior technician," "tutor," or "front-line therapist."*

Sec. 506.055. STUDENTS, INTERNS, AND FELLOWS. *This chapter does not apply to an applied behavior analysis activity or service of a college or university student, intern, or fellow if:*

(1) *the activity or service is part of a defined behavior analysis program of study, course, practicum, internship, or postdoctoral fellowship;*

(2) *the activity or service is directly supervised by a licensed behavior analyst or an instructor in a course sequence approved by the certifying entity; and*

(3) *the person is designated as a "student," "intern," "fellow," or "trainee."*

Sec. 506.056. SUPERVISED EXPERIENCE. *This chapter does not apply to an unlicensed person pursuing supervised experience in applied behavior analysis if the supervised experience is consistent with the requirements of the certifying entity and commission rules.*

Sec. 506.057. TEMPORARY SERVICES OF BEHAVIOR ANALYST FROM AN-

OTHER STATE. (a) *This chapter does not apply to a behavior analyst licensed in another jurisdiction or certified by the certifying entity if the activities and services conducted in this state:*

- (1) are within the behavior analyst's customary area of practice;*
- (2) are conducted not more than 20 days in a calendar year; and*
- (3) are not otherwise in violation of this chapter.*

(b) A behavior analyst described by Subsection (a) shall inform the recipient of applied behavior analysis services, or a parent or guardian of the recipient if the recipient is under 18 years of age, that:

- (1) the behavior analyst is not licensed in this state; and*
- (2) the activities and services provided by the behavior analyst are time-limited.*

Sec. 506.058. TEACHER OR EMPLOYEE OF SCHOOL DISTRICT. (a) *This chapter does not apply to a teacher or employee of a private or public school who provides applied behavior analysis services if the teacher or employee is performing duties within the scope of the teacher's or employee's employment.*

(b) A person described by Subsection (a) may not:

- (1) represent that the person is a behavior analyst, unless the applied behavior analysis services provided are within the person's education, training, and competence;*
- (2) offer applied behavior analysis services to any person, other than within the scope of the person's employment duties for the school; or*
- (3) receive compensation for providing applied behavior analysis services, other than the compensation that the person receives from the person's school employer.*

Sec. 506.059. PERSONS WHO DO NOT PROVIDE DIRECT SERVICES. (a) *This chapter does not apply to a person who:*

- (1) is a behavior analyst who practices with nonhumans, including an applied animal behaviorist or an animal trainer;*
- (2) teaches behavior analysis or conducts behavior analytic research if the teaching or research activities do not involve the delivery or supervision of applied behavior analysis services; or*
- (3) is a professional who provides general applied behavior analysis services to organizations if those services:*
 - (A) are for the benefit of the organization; and*
 - (B) do not involve direct services to individuals.*

(b) A person described by Subsection (a) may use the title "behavior analyst."

SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

Sec. 506.101. ADVISORY BOARD MEMBERSHIP. (a) *The advisory board is composed of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:*

- (1) four licensed behavior analysts, at least one of whom must be certified as a Board Certified Behavior Analyst—Doctoral or hold an equivalent certification issued by the certifying entity;*
- (2) one licensed assistant behavior analyst;*
- (3) one physician who has experience providing mental health or behavioral health services; and*
- (4) three members who represent the public and who are either former recipients of applied behavior analysis services or the parent or guardian of a current or former recipient of applied behavior analysis services.*

(b) To be qualified for appointment under Subsection (a)(1), a person must have at least five years of experience as a licensed behavior analyst after being certified by the certifying entity.

(c) *Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.*

Sec. 506.102. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Sec. 506.103. TERMS; VACANCY. (a) Members of the advisory board serve staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member may not serve more than two consecutive six-year terms.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Sec. 506.104. PRESIDING OFFICER. The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 506.105. MEETINGS. The advisory board shall meet at least twice each year and at the call of the presiding officer of the commission or the executive director.

Sec. 506.106. GROUNDS FOR REMOVAL. A member of the advisory board may be removed as provided by Section 51.209.

Sec. 506.107. COMPENSATION; REIMBURSEMENT. (a) A member of the advisory board may not receive compensation for service on the advisory board.

(b) A member of the advisory board is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 506.151. GENERAL POWERS AND DUTIES. (a) The commission shall adopt rules consistent with this chapter for the administration and enforcement of this chapter.

(b) The department shall:

- (1) administer and enforce this chapter;*
- (2) evaluate the qualifications of license applicants;*
- (3) provide for the examination of license applicants;*
- (4) issue licenses;*
- (5) in connection with a hearing under this chapter, issue subpoenas, examine witnesses, and administer oaths under the laws of this state; and*
- (6) investigate persons engaging in practices that violate this chapter.*

(c) The commission or executive director may deny, revoke, or suspend a license or may otherwise discipline a license holder in accordance with Section 51.353.

Sec. 506.152. STANDARDS OF ETHICAL PRACTICE. The commission shall adopt rules under this chapter that establish standards of ethical practice.

Sec. 506.153. ASSISTANCE FILING COMPLAINT. The department, in accordance with Section 51.252, shall provide reasonable assistance to a person who wishes to file a complaint with the department regarding a person or activity regulated under this chapter.

Sec. 506.154. FEES. The commission by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 506.201. TELEPHONE NUMBER FOR COMPLAINTS. The department shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Sec. 506.202. CONFIDENTIALITY OF COMPLAINT INFORMATION. (a) Except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by the department in connection with the complaint and investigation are not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) disclosure, discovery, subpoena, or other means of legal compulsion for release of information to any person.

(b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the department in connection with the complaint, in accordance with Chapter 611, Health and Safety Code, may be disclosed to:

(1) the department and its employees or agents involved in license holder discipline;

(2) a party to a disciplinary action against the license holder or that party's designated representative;

(3) a law enforcement agency if required by law;

(4) a governmental agency if:

(A) the disclosure is required or permitted by law; and

(B) the agency obtaining the disclosure protects the identity of any patient whose records are examined; or

(5) the legislature.

(c) The department shall protect the identity of any patient whose records are examined in connection with a disciplinary investigation or proceeding against a license holder, except:

(1) a patient who initiates the disciplinary action; or

(2) a patient who has submitted a written consent to release the records.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 506.251. LICENSE REQUIRED. (a) Except as provided by Subchapter B, a person may not engage in the practice of applied behavior analysis unless the person holds a license under this chapter.

(b) A person may not use the title "licensed behavior analyst" or "licensed assistant behavior analyst," as appropriate, unless the person is licensed under this chapter.

(c) Except as provided by Subchapter B, a person may not use the title "behavior analyst" unless the person is licensed under this chapter.

Sec. 506.252. LICENSE APPLICATION. Each applicant for a license under this chapter must submit an application and the required fees to the department. The application must include sufficient evidence, as defined by commission rules, that the applicant has successfully completed a state-approved criminal background check.

Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR ANALYST. An applicant for a license as a licensed behavior analyst must present evidence to the department that the applicant:

(1) is currently certified by the certifying entity as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst—Doctoral or an equivalent certification issued by the certifying entity;

(2) has met the educational requirements of the Board Certified Behavior Analyst standard or the Board Certified Behavior Analyst—Doctoral standard or an equivalent standard adopted by the certifying entity;

(3) has passed the Board Certified Behavior Analyst examination, or an equivalent examination offered by the certifying entity, in applied behavior analysis;

(4) is in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; and

(5) is not subject to any disciplinary action by the certifying entity.

Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR ANALYST. An applicant for a license as a licensed assistant behavior analyst must present evidence to the department that the applicant:

(1) is currently certified by the certifying entity as a Board Certified Assistant Behavior Analyst or an equivalent certification issued by the certifying entity;

(2) has met the educational requirements of the Board Certified Assistant Behavior Analyst standard or an equivalent standard adopted by the certifying entity;

(3) has passed the Board Certified Assistant Behavior Analyst examination, or an equivalent examination offered by the certifying entity, in applied behavior analysis;

(4) is in compliance with all professional, ethical, and disciplinary standards established by the certifying entity;

(5) is not subject to any disciplinary action by the certifying entity; and

(6) is currently supervised by a licensed behavior analyst in accordance with the requirements of the certifying entity.

Sec. 506.255. ISSUANCE OF LICENSE. The department shall issue a license as a licensed behavior analyst or a licensed assistant behavior analyst, as appropriate, to an applicant who:

(1) complies with the requirements of this chapter;

(2) meets any additional requirements the commission establishes by rule; and

(3) pays the required fees.

Sec. 506.256. RECIPROCITY. (a) The department shall issue a license to a person who is currently licensed as a behavior analyst or as an assistant behavior analyst from another state or jurisdiction that imposes licensure requirements similar to those specified in this chapter.

(b) An applicant for a reciprocal license shall:

(1) submit evidence to the department that the applicant:

(A) is in good standing as determined by the department;

(B) holds a valid license from another state or jurisdiction; and

(C) is in compliance with other requirements established by Section 506.252, 506.253, 506.254, or 506.255, as appropriate; and

(2) pay the required fees.

Sec. 506.257. RETIREMENT STATUS. The commission by rule may adopt a system for placing a person licensed under this chapter on retirement status.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 506.301. LICENSE EXPIRATION. A license issued under this chapter expires on the second anniversary of the date of issuance.

Sec. 506.302. LICENSE RENEWAL. Before the expiration of a license, a license may be renewed by:

(1) submitting an application for renewal;

(2) paying the renewal fee imposed by the commission; and

(3) providing verification to the department of continued certification by the certifying entity, which signifies that the applicant for renewal has met any continuing education requirements established by the certifying entity.

SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY ACTION.

After a hearing, the commission or executive director may deny a license to an applicant, suspend or revoke a person's license, or place on probation a license holder if the applicant or license holder:

- (1) violates this chapter, a commission rule, or an order of the commission or the executive director;*
- (2) obtains a license by means of fraud, misrepresentation, or concealment of a material fact;*
- (3) sells, barter, or offers to sell or barter a license; or*
- (4) engages in unprofessional conduct that:*
 - (A) endangers or is likely to endanger the health, welfare, or safety of the public as defined by commission rule; or*
 - (B) violates the code of ethics adopted and published by the commission.*

SUBCHAPTER I. ENFORCEMENT PROCEDURES

Sec. 506.401. ENFORCEMENT PROCEEDINGS. The commission, department, or executive director may enforce this chapter, a rule adopted under this chapter, or an order of the commission or executive director as provided by Subchapters F and G, Chapter 51.

SECTION 3. (a) As soon as practicable after the effective date of this Act, the presiding officer of the Texas Commission of Licensing and Regulation shall appoint nine members to the Behavior Analyst Advisory Board in accordance with Chapter 506, Occupations Code, as added by this Act. In making the initial appointments, the presiding officer of the commission shall designate three members for terms expiring February 1, 2019, three members for terms expiring February 1, 2021, and three members for terms expiring February 1, 2023.

(b) Notwithstanding Section 506.101, Occupations Code, as added by this Act, a person who meets the requirements of Section 506.253 or 506.254, Occupations Code, as added by this Act, may be appointed as an initial behavior analyst or assistant behavior analyst member of the Behavior Analyst Advisory Board, as applicable, regardless of whether the person holds a license issued under Chapter 506, Occupations Code, as added by this Act.

SECTION 4. Not later than April 1, 2018, the Texas Commission of Licensing and Regulation shall adopt the rules, procedures, and fees necessary to administer Chapter 506, Occupations Code, as added by this Act.

SECTION 5. Notwithstanding Chapter 506, Occupations Code, as added by this Act, a behavior analyst or assistant behavior analyst is not required to hold a license under that chapter to practice as a licensed behavior analyst or licensed assistant behavior analyst in this state before September 1, 2018.

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2017.

(b) Section 506.251, Occupations Code, and Subchapter I, Chapter 506, Occupations Code, as added by this Act, take effect September 1, 2018.

Passed the Senate on May 1, 2017: Yeas 25, Nays 6; the Senate concurred in House amendment on May 25, 2017: Yeas 25, Nays 6; passed the House, with amendment, on May 23, 2017: Yeas 121, Nays 25, one present not voting.

Approved June 15, 2017.

Effective September 1, 2017, except as provided by § 6(b).